

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
<b>CHRISTOPHER CHOI</b>	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 12-020V

:.....:

**DECISION AND ORDER**

On December 10, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Christopher Choi for a variance to reduce the 30-foot side setback feet to two feet for a detached garage, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the Zoning Regulations).

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Christopher Choi testified on his own behalf. No one testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property, known as 14821 Burntwoods Road, is located on the south side of Burntwoods Road, about 600 feet east of MD 97. It is identified as Tax Map 21, Grid 4, Lot 31 (the Property).

2. Property Description. The RR-DEO (Rural Residential: Density Exchange Option) zoned Property is an irregularly shaped 3.63-acre lot. It is improved with a very large single-family detached dwelling consisting of a guesthouse and main house with separate rear decks and porches, a courtyard and geothermal rods. The main dwelling is accessed from a circular paved driveway running from the northwesterly side of the Property to the southeasterly side, where it ends in the circular courtyard. A line of evergreen trees runs along the eastern property line.

3. Adjacent properties are also zoned RR-DEO. Lot 32 to the east is improved with a single-family detached dwelling fronting on Burntwoods Road. Lots 9 and 10 to the south are each improved with a single-family detached dwelling fronting on McClintock Drive. Lot 12 to the west is improved with a single-family detached dwelling fronting on Burntwoods Road.

4. Variance Request. The Petitioner, the Property owner, requests a variance from Section 105.E.4.a(3)(b) to construct a 28' by 48' detached garage two feet from the eastern property line, instead of the required 30-foot side setback.

5. Mr. Choi testified to having recently purchased the property. He explained the Property has a large drop in elevation running from the east side to toward the rear lot line. The garage's location within the setback is intended to block the view of what he called the oddly shaped and designed dwelling because neighbors have always complained about its appearance.

**CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations.

That section provides a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
- (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2.(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property

such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property has a large change in elevation causing practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1). The attached garage will be used for a permitted purpose and will not change the nature or intensity of use. It is not unusual to see four-car detached garages in this part of the County. Subject to the condition that the Petitioner retain or replace the trees along the eastern lot line if these are on his Property, the variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

The practical difficulty in complying strictly with the setback regulation arises from the topography of the lot and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

The proposed detached garage is similar in size to area garages. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

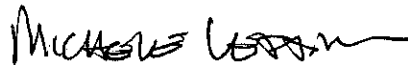
Based upon the foregoing, it is this **20<sup>th</sup> day of December 2012**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Christopher Choi for a variance to reduce the 30-foot side setback feet to two feet for a detached garage in the RR-DEO Zoning District is **GRANTED**.

**Provided, however, that:**

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall retain or replace the trees along the eastern lot line if these are on his Property.
3. The Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



**Michele L. LeFaivre**

**Date Mailed:** \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.